

Vision and Choice: Protecting Your Historic Landmark

A Guide to
Virginia's Preservation Easement Program



Virginia Department of Historic Resources

PROCESS FOR DONATING AN EASEMENT

Easements may be donated on properties that are listed on the Virginia Landmarks Register and the National Register of Historic Places, either individually or as contributing properties in historic districts. A property must be officially registered as a historic landmark, or included in a registered historic district, before the easement donation can be accepted.

When you are ready to discuss donation of an easement, a staff member will make a site visit to your property. During this visit, the staff member will further explain the program and the details of an easement, and will walk through the property with you to assess its features and current condition. The terms of the easement can be discussed or negotiated at this time. Later, after you have had a chance to consider the matter further, the staff will present the easement offer to the board, and the board will vote on whether to accept the easement offer. Potential donors are always advised to consult their attorneys before proceeding with an easement donation.

On approval by the board, the terms of the easement will be put in final form. The staff will document the property with photographs, and the easement will be signed by the donor and by the director of the Department of Historic Resources. The signed easement is then recorded in the local

*Berry Hill, Halifax County;
easement granted 1991*



Willie Graham



*Erin,
Warren County;
easement granted 1997*

- **Landscape and acreage:** The board generally requires that the easement cover enough acreage to preserve the setting and historic context of the landmark. Restrictions on the land may prohibit or limit subdivision and require that the landscape character of the property be maintained.
- **Archaeology:** When a property involves an archaeological site, the easement normally stipulates that the owner notify the board before undertaking any new disturbance of the soil. In this way, staff archaeologists can help prevent any damage to the site. Easements also frequently require the owner to protect the site from vandalism and erosion.
- **Public access:** Most easements held by the board include some provision for opening the property to the public on a very limited basis. The Internal Revenue Service requires a “direct public benefit” in order to deduct the value of an easement. This requirement is met when an easement donor agrees to provide for public access at least one day a year on request. Before making a request for opening, the board may take into account security, any limiting personal circumstances, and other relevant factors.

- Donation of an easement may stabilize or even lower your local property taxes. Tax assessors are required by law to take an easement into account in valuing your property. Because the easement generally eliminates development rights, the assessed value of your property will normally be reduced. The extent of this reduction, of course, varies with the nature of the land in the immediate area and the likelihood that your property would have been developed in the near future.
- Finally, under legislation passed during the 1999 Virginia General Assembly session, up to 50% of the value of the easement may be claimed as a credit, within certain dollar limits, against state income taxes for taxable years. Like the federal tax deduction, this state tax credit may be carried forward for up to five years.*

TERMS AND CONDITIONS

Every easement is negotiated on an individual basis with the property owner. The department's staff will help identify and discuss with you the historic elements of your property, as well as your goals, plans, and needs. The staff will also provide a list of resources, such as the names of real estate appraisers, to assist in your decision making.

Most easements held by the Board of Historic Resources include provisions similar to the following:

- **Architectural protections:** If the easement protects a historic building, the board generally requires some control over significant architectural elements of the interior as well as the exterior. Usually, owners must secure written approval from the board before making changes. Routine maintenance, such as painting, is excepted.

* This legislation includes a clause that invalidates its provisions if certain events related to general fund revenues occur. For further information, see *Code of Virginia* §58.1-510-513 and 58.1-3524(C) or contact the Department of Historic Resources.

WHAT ARE THE FINANCIAL BENEFITS?

In addition to these practical and emotional benefits, there can be significant financial benefits to easement donation:

- The value of the easement, as determined by a qualified appraiser, can be claimed as a charitable donation deduction from your federal taxable income. Deductions for conservation easements may be claimed for up to 30% of the donor's adjusted gross income for any one year. Any unused portion of the deduction may be carried forward for up to five years.
- Donation of an easement can also lower estate taxes. By eliminating the right to develop your property further, you can lower its value in your estate. For your heirs, this can mean the difference between keeping the property in the family and having to sell it in order to pay estate taxes.
- Under the American Farm and Ranch Protection Act, 40% of the value of land subject to an easement may be excluded from a decedent's estate. Note, however, that this exclusion applies to land only, not to historic structures.



*Westover,
Charles City County;
easement granted 1974*

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WHY GIVE AN EASEMENT?

For most easement donors, the primary motivation behind the gift is a desire to see the property protected. Because the easement is perpetual, the donor is assured that all future owners of the property will be bound by its conditions. This can be a welcome guarantee for those who have invested considerable time, money, or energy in the restoration or preservation of a historic property.

In addition, by accepting an easement, the Commonwealth itself makes a commitment to the preservation of the property. The department's staff will provide technical advice and assistance, as well as literature on preservation treatments. The staff is obligated to inspect easement properties periodically. Such inspections provide an opportunity to discuss maintenance issues, proposed changes, or other matters related to your property. Staff members are also available to meet with you on request to discuss your concerns and to give advice on the most appropriate treatment for your property.

*Kent-Valentine House,
City of Richmond;
easement granted 1972*



Richard Cheek



*Kennedy-Lunsford Farm,
Rockbridge County;
easement granted 1998*

HOW DOES AN EASEMENT WORK?

In granting an easement, you, as the property owner, will retain the essential interest in your property. You may use this interest as you see fit. You may live on the property, sell it, or give it away, subject only to the limitations of the easement.

The characteristics that make your property a historic landmark will be described in the deed of easement and documented with photographs. The easement will clearly define which features are protected. It will generally encompass all historic structures, including historic outbuildings as well as the primary building on the property. In addition, archaeological sites, historic landscape features, and adjacent open space are usually protected. Incompatible uses such as subdivision and commercial development are generally limited or prohibited.

While easements ensure protection, they also provide for some flexibility. Buildings change all the time, of course, particularly when they remain in private hands for private use. Easements accommodate architectural or other changes, such as kitchen and bathroom remodeling, that will not compromise the historic nature of the property. Such changes are subject to approval by the Board of Historic Resources. The staff of the Department of Historic Resources works closely with property owners when such changes are planned to ensure that the changes will be appropriate, and that the approval process will proceed smoothly and successfully.

*Joseph Janney House,
Waterford Historic District,
Loudoun County;
easement granted 1981*



WHAT IS A HISTORIC PRESERVATION EASEMENT?

An easement is a voluntary transfer of some rights associated with land ownership. A historic preservation easement is an agreement, set forth in a legal document, that allows the donor to retain ownership and use of a historic landmark, while granting to someone else the authority to protect its historic, architectural, and archaeological features. Such easements contain perpetual covenants that obligate the owner to refrain from actions that are incompatible with the preservation of the landmark. This means that the easement covenants pass with the title to the property and apply to all subsequent owners.

Agreements of this kind may also be called conservation easements or even scenic, open space, exterior, or façade easements. The name has less to do with the way the agreement works than with the kind of resource it protects.

Under the Commonwealth's Historic Preservation Easement Program, easements are granted to the Virginia Board of Historic Resources and are administered by the staff of the Department of Historic Resources. The program is designed to protect properties that are listed on the Virginia Landmarks Register and the National Register of Historic Places. The board holds more than 300 easements in one of the oldest and most extensive programs in the country. To date, no easement has been challenged in court, and there have been few violations. This success is due in large part to the high standards that have governed acceptance of easements and administration of the program, as well as to the laudable sense of stewardship shared by owners of easement properties.

*Mount Airy,
Richmond County;
easement granted 1977*



Library of Congress

INTRODUCTION

Virginia's historic landmarks are irreplaceable resources of the Commonwealth. These landmarks are the tangible reminders of the state's rich history and traditions. Our historic buildings, neighborhoods, landscapes, and sites are essential to Virginia's special identity and enhance the lives of both our citizens and our countless visitors. While many famous places have had their futures secured through conversion to museums or other types of public amenities, most of Virginia's landmarks remain in private ownership and thus are vulnerable to loss or destructive change. Each year sees further erosion of the state's historic character through demolitions, neglect, suburban sprawl, highway construction, and other forms of modern development.

Although change is inevitable, many owners of historic landmarks are sincerely concerned about the future of their properties and want to ensure the proper stewardship of these resources beyond their tenure. To meet this need, the Commonwealth in 1966 instituted the Historic Preservation Easement Program, a tool that enables historic landmarks to enjoy long-term legal protection while remaining in private ownership.

Through Virginia's Historic Preservation Easement Program, private owners have the opportunity to guarantee the perpetual protection of important historic resources without giving up ownership, use, or enjoyment of these properties. While these landmarks remain in private hands and on the tax rolls, their existence and sympathetic treatment are secured for the use and benefit of future generations. Furthermore, property owners can often take advantage of significant financial benefits provided by easement donations. These benefits are discussed in this handbook.



*Fairfax-Moore House, Alexandria;
easement granted 1979*



*Tuckahoe, Goochland County;
easement granted 1986*



*Mount Columbia, King William
County; easement granted 1988*



*Furnley, Clarke County;
easement granted 1989*

“Virginia’s historic buildings and sites, with the stories each has to tell, remind us of the awesome responsibility of maintaining our inheritance.”

— *Virginia Landmarks Register, 4th edition*

court records. The original document is returned to the department for deposit in the State Archives in the Library of Virginia.

The department's staff is pleased to discuss the Commonwealth's easement program with individuals and groups. For more information, contact:

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Richmond, Virginia 23221

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www.dhr.state.va.us

The Board of Historic Resources is authorized to hold historic preservation easements under Chapters 22 and 17 of Title 10.1 of the Code of Virginia of 1950, as amended.



*Alexander Baker House,
Winchester Historic District, Winchester;
easement granted 1992*

*Lower Brevo, Fluvanna County;
easement granted 1980*

